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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Corporate Decision #98-14**  
**March 1998**

**DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION  
BY BANK OF AMERICA, NATIONAL ASSOCIATION, PHOENIX, ARIZONA  
TO PURCHASE CERTAIN ASSETS AND ASSUME CERTAIN LIABILITIES OF  
FIRST OMNI BANK, NATIONAL ASSOCIATION, MILLSBORO, DELAWARE**

**FEBRUARY 10, 1998**

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**I. INTRODUCTION**

On December 24, 1997, application was made to the Office of the Comptroller of the Currency (OCC) for prior authorization for Bank of America, National Association, Phoenix, Arizona ("Bank of America") to purchase certain assets and assume certain liabilities of First Omni Bank, National Association, Millsboro, Delaware ("First Omni"). This application was based on an agreement entered into between the proponents on December 10, 1997.

As of September 30, 1997, Bank of America, which operates as a nationwide credit card bank, had total assets of \$7.9 billion and total deposits of \$1.2 billion. As of the same date, First Omni, which emphasizes credit card lending, had assets of \$438 million and deposits of \$335 million. Bank of America is a wholly owned subsidiary of Bank America Corporation, a multi-bank holding company. First Omni is a wholly owned subsidiary of First Maryland Bancorporation, a multi-bank holding company. Bank of America will acquire approximately \$630 million of First Omni's credit card receivables as well as certain insured deposit liabilities. No branches of First Omni will be acquired. First Omni will remain in operation after the transaction is consummated.

The OCC received comments from one individual opposing the application on competitive grounds. The issue raised by the protester is addressed under II.A.1. below.

**II. STATUTORY AND POLICY REVIEWS**

**A. The Bank Merger Act**

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger or purchase and assumption transaction between insured banks where the resulting institution will

be a national bank. Under the Act, the OCC may not approve an application if it finds that the proposed transaction will result in a monopoly or be in furtherance of any combination or conspiracy to monopolize the business of banking in any part of the United States, will substantially lessen competition in any section of the country, tend to create a monopoly, or will be in restraint of trade. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the communities to be served. For the reasons stated below, we find that the purchase and assumption transaction described above may be approved under 12 U.S.C. § 1828(c).

## **1. Competitive Analysis**

The transaction will not adversely affect competition. Consumer credit card services are the sole business of Bank of America and the principal line of business engaged in by First Omni. Credit card services encompass the marketing and issuance of credit cards, extension of credit to cardholders, and the processing of credit transactions. Credit card banks may also securitize their card account receivables and subsequently service the securitized receivables trusts.

As credit card services are the primary activity of both parties to this application and the subject of the transaction, that activity is the only material basis for a competitive analysis. The Federal Reserve has recognized a market for credit card services that is national in scope. Credit card companies solicit and serve customers throughout the United States and similarly face competitors located throughout the nation.

This national market for credit card services is highly competitive and unconcentrated and will remain so after this proposed transaction. Published industry data indicate that Bank of America ranks tenth nationally among Visa and Mastercard credit card lenders (measured by dollar volume of balances outstanding as of September 30, 1997). Consummation of this proposal will leave that ranking unchanged among a population of lenders including several strong and effective competitors.

The market is very fragmented where even the leading lenders have relatively modest market shares. Using only the published data for Visa and Mastercard (which omits First Omni as well as other competitors such as American Express and Discover), a market constructed of only the twenty largest lenders will show that Bank of America's market share will only increase from 10.1% to 10.8% with the addition of First Omni's balances. Using the same data to calculate a Herfindahl-Hirshman Index ("HHI"), the market's concentration will only increase from 871.33 to 872.76, a negligible change of only 1.43. The market will thus remain unconcentrated evidencing no material adverse impact on the national credit card market from this transaction.

As required by 12 U.S.C. 1828(c)(4), the OCC solicited the comments of the Department of Justice, Federal Reserve System, and the Federal Deposit Insurance Corporation on the competitive impact of this application. The Department of Justice and Federal Reserve Board

of Governors have both furnished responses that the proposal will have no significant anticompetitive effect. The Federal Deposit Insurance Corporation has expressed no opinion on the matter.

**2. Financial and Managerial Resources**

The Bank Merger Act requires the OCC to consider "... the financial and managerial resources and future prospects of the existing and proposed institutions . . . ." We find that the financial and managerial resources of both banks do not raise significant concerns that would cause the application to be disapproved. The future prospects of the proponents, individually, are considered favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Purchase and Assumption Application.

**3. Convenience and Needs**

The resulting banks will help meet the convenience and needs of the communities presently being served by First Omni. Subsequent to the transaction, Bank of America will continue the marketing of credit card products to First Omni's customers. Bank of America also has the capacity to offer a wider array of such products to those customers. First Omni will also remain as a potential provider of financial products and services other than credit cards. Accordingly, we believe the impact of this purchase and assumption on the convenience and needs of the communities to be served is consistent with an approval of this application.

**B. The Community Reinvestment Act**

The Community Reinvestment Act (CRA) requires the OCC to take into account the applicants' records of helping to meet the credit needs of their entire communities, including low-and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. Both banks have been examined within the last year. Bank of America received an "outstanding" rating and First Omni is rated "satisfactory". No public comments addressing CRA performance were received by the OCC on this application, and the OCC has no other basis to question the banks' performance in complying with the CRA. Accordingly, we find that approval of the proposed purchase and assumption is consistent with the CRA.

**III. Conclusion**

For the reasons set forth above, including the representations and commitments made by the applicant, we find the purchase and assumption is legally authorized pursuant to the Bank Merger Act. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

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Steven J. Weiss  
Deputy Comptroller

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02-10-98  
Date

Application Control Number: 97-ML-02-0051